

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

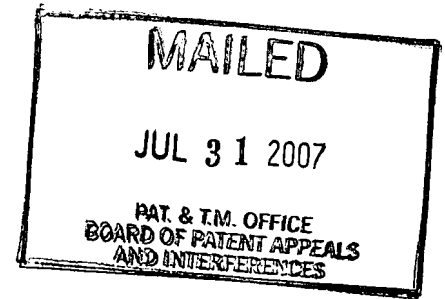
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Ex parte LUIS M. ORTIZ  
AND KERMIT D. LOPEZ

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Application No. 09/902,348

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on July 25, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On March 2, 2006, appellants filed an Appeal Brief under 37 CFR § 41.37. A review of the file reveals that the "Summary of Claimed Subject Matter," as required by 41.37(c)(1)(v), is not properly set forth. 37 CFR § 41.37(c)(1)(v) which states:

(v) ***Summary of claimed subject matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The independent claims 1, 18, 19, 20, 21, 35, 37, 41, 45, and 50 must be mapped to the **disclosure**, including **specification page and line number**, and, **if applicable**, **drawing reference characters**.

Correction is required. MPEP § 1205.03 states:

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

In addition, the "Evidence Appendix" and "Related Proceedings Appendix" that are required by 37 CFR § 41.37(c)(1)(ix) and (x) are missing from the Appeal Brief. Appropriate correction is required.

Lastly, on May 16, 2006, an Examiner's Answer was entered into the record. The Examiner did not properly consider Appellant's statement in the "Related Appeals and Interferences" section. In addition, In the Evidence Relied Upon section, page 2, heading (8), the examiner relied on the following references:

Anderson et al.	6,578,203	6-2003
Jain et al	5,729,471	3-1998
Blanchard et al.	6,782,102	8-2004
Augems	6,434,403	8-2002

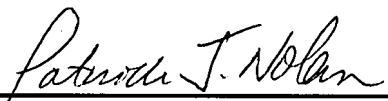
A review of the file reveals that reference Hendricks et al. (US Patent No. 6,675,386) was used in the rejection of claims 5, 14, 16, 17, 24, 33 and 34, reference McClintock (US Patent No. 5,598,208) was used in the rejection of claim 25 and reference Treyz et al (6,526,335) was used in the rejection of claims 44 and 55, as stated in the Grounds of Rejection, paragraph (9) of the examiner's answer.

Before further review, the examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the Grounds of Rejections. See the Manual of Patent Examining Procedure, (MPEP) § 1207.02. Appropriate correction is required.

Accordingly, it is **ORDERED** that the application is returned to the Examiner to:

- 1) hold the Appeal Brief of March 2, 2006, defective;
- 2) notify applicants to file a paper providing a summary of the claimed subject matter as required by 37 CFR § 41.37(c)(1)(v) and the missing appendixes;
- 3) consider the paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) and the missing appendixes;
- 4) issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, heading (8) of the Examiner's Answer and properly acknowledging the Related Appeals and Interferences, heading (2) filed in the Appeal Brief; and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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